

**CITY OF MILPITAS  
UNAPPROVED**

**PLANNING COMMISSION MINUTES**

**April 9, 2003**

**I.  
PLEDGE OF  
ALLEGIANCE**

Chair Hay called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.  
ROLL CALL**

Present: Hay, Lalwani, Galang, Giordano, Nitafan, Sandhu and Williams  
Absent: None  
Staff: DeVries, Faubion, Heyden, King, Lindsay, McNeely, Medina, and Rodriguez

**III.  
PUBLIC FORUM**

Chair Hay invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no speakers.

**IV.  
APPROVAL OF MINUTES  
March 26, 2003**

Chair Hay called for approval of the minutes of the Planning Commission meeting of March 26, 2003.

**Commissioner Giordano** referenced page 2 of the minutes and changed the following sentence to read "Commissioner Giordano wanted to thank Mayor Esteves, Vice Mayor Dixon, City Council, MUSD President, Vice President and Board, City Manager and Fire Chief for their support at the March 15, 2003 Bobby Sox opening ceremony held at the Roger Yee Fields."

Commissioner Giordano also referenced page 3 of the minutes and changed the following sentence to read "Commissioners with a conflict of interest on any action can *excuse* themselves from voting on the appropriate action."

**Motion** to approve the minutes of March 26, 2003 with the changes indicated.

M/S: Lalwani/Sandhu

AYES: 7

NOES: 0

**V.  
ANNOUNCEMENTS**

**Tambri Heyden, Planning Manager**, noted that a copy of the Home Depot six-month appeal staff report was distributed along with plans showing the perimeter and landscape screening alternative to a masonry wall approved by the Home Depot task force and City Council. She also noted that the reported sign violation of a banner at Caesar's Pizza was corrected in one day. In response to Commissioner Giordano's inquiry regarding speeding on Heath Street and the possibility of installing traffic calming, Ms. Heyden noted that the request has been forwarded to the appropriate staff person and she will report back at the next meeting.

**Commissioner Williams** thanked Commissioner Sandhu and the Sikh Foundation for the community breakfast event at Sunnyhills Church.

**Commissioner Sandhu** thanked the Sunnyvale neighborhood organization and all those who attended the breakfast.

**Vice Chair Lalwani** announced that the Rotary Club and Chamber of Commerce have invited Congressman Mike Honda to speak about the legislative update on April 21, 2003. For more information, those interested can call 262-2613.

Commissioner Giordano also thanked Commissioner Sandhu for the community breakfast noting that "It was very informative and the food was delicious". Commissioner Giordano asked staff if any action is required of the Commission regarding the Home Depot report and Ms. Heyden said "No". Commissioner Giordano also asked staff if the two telecommunication issues that are consent items could be referred for Subcommittee approval and Ms. Heyden replied that they require Planning Commission approval based on the way the ordinance is currently written.

## **VI. APPROVAL OF AGENDA**

Chair Hay called for approval of the agenda.

Ms. Heyden noted a correction to Agenda Item No. 6 (AMENDMENT TO THE ZONING ORDINANCE TEXT P-ZT2003-1) and indicated that the continuation date should be noted as to March 26, 2003.

**Motion** to approve the agenda with the change indicated.

M/S: Lalwani/Sandhu

AYES: 7

NOES: 0

## **VII. CONSENT CALENDAR Item Nos. 1, 3, 4, 5 and 8**

Chair Hay asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

**Commissioner Williams** requested that Item No. 2 (USE PERMIT NO. P-UP2003-4 and S-ZONE AMENDMENT P-SA2003-22) be added to the consent calendar. Commissioner Williams noted that the Commission has approved similar types of applications in the past. Ms. Heyden clarified that the applicant is contesting Condition No. 11 and that is why the item is not on consent. The Commission agreed to leave Agenda Item No. 2 off consent.

Chair Hay opened the public hearing on Consent Item Nos. 1, 3, 4, 5 and 8.

There were no speakers from the audience.

## **Close Public Hearing Item Nos. 1, 3, 4 and 5**

**Motion** to close the public hearing on Consent Item Nos. 1, 3, 4 and 5. Item No. 8 will be continued to the May 28, 2003 Planning Commission meeting.

M/S: Nitafan/Sandhu

AYES: 7

NOES: 0

**Motion** to approve the consent calendar on Consent Item Nos. 1, 3, 4, 5 and 8.

- \*1 USE PERMIT NO. P-UP2003-6 and S-ZONE AMENDMENT (P-SA2003-13):**  
A request to locate an approximately 11,500 square foot specialty retail store selling alcoholic and non-alcoholic beverages, gourmet food and accessories (Beverages and More) at 1210 Great Mall Drive (APN: 086-24-055). Project Planner: Troy Fujimoto, 586-3287. (PJ# 3156) (*Recommendation: Approval with Conditions*)
- \*3 USE PERMIT NO. P-UP2003-7 and S-ZONE AMENDMENT (P-SA2003-21):**  
Request to install 3 telecommunications antennas inside the church tower, and equipment cabinets in a ground enclosure, at Mt. Olive Church, 1989 E. Calaveras Blvd. (APN: 29-25-7). Applicant: Sprint. Project Planner: Annelise Judd, 586-3273. (PJ# 2320) (*Recommendation: Approval with Conditions*)
- \*4 SIX-MONTH REVIEW OF USE PERMIT AMENDMENT NO. P-UA2002-22:**  
Verification of compliance with conditions of approval and Resolution No. 449 for a restaurant with outdoor seating (a total of 28 seats indoors and outdoors) at 279 Jacklin Road (APN 29-28-029). Applicant: Mercedes Albana. Project Planner: Staci Pereira, 586-3278. (PJ#2308) (*Recommendation: Note receipt and file*)
- \*5 USE PERMIT NO. P-UP2003-9:** A request to operate a 1,200 square feet grocery store and meat market (Milpitas Halal Market), at 74 Dempsey Road (APN 88-04-001). Applicant: Al-Khafaji Hassan. Project Planner: Staci Pereira, 586-3278. (PJ# 2321) (*Recommendation: Approval with Conditions*)
- \*8 USE PERMIT NO. P-UA2002-8:** (*Continued from February 26, 2003*) A request for beer and wine sales and a reduction in the number of parking spaces required by the zoning code in conjunction with a request to add 12 seats to an existing 37-seat Tofu House restaurant. (APN 022-25-041). Applicant: Sung Ho Yoon. Project Planner: Troy Fujimoto 586-3287. (PJ#2245) (*Recommendation: Continue to May 28, 2003*)

M/S: Lalwani/Giordano

AYES: 7

NOES: 0

## VIII. PUBLIC HEARING

### 1. USE PERMIT NO. P-UP2003-4 and S-ZONE AMENDMENT (P-SA2003-22): Applicant: Verizon Wireless

Chair Hay opened the public hearing on Agenda Item No. 2.

Ms. Heyden presented Use Permit No. P-UP2003-4 and S-Zone Amendment P-SA2003-22 which is a request to install 6 telecommunications antennas on the building roof, and equipment cabinets in a ground enclosure at Heald College, 341 Great Mall Pkwy and recommended approval with conditions. Ms. Heyden also noted that the applicant is contesting Condition No. 11 which reads the following:

- Each antenna shall be identified to denote its function, i.e., transmitter or receiver antenna. Shut down of transmitter antennas shall be provided. Contact the Fire Department for specifics on the requirements for shutdown. An indicator light shall be incorporated in the shutdown system. Shutdown procedures shall be reviewed and approved by the Fire Department.

Commissioner Williams asked, "What is the applicant's concern"? Ms. Heyden said that the applicant wants control of shutting off the equipment in the event of an emergency instead of having the Fire Department shut off the electrical equipment.

Chair Hay asked, "How have other applicants worked out this situation with the Fire Department"? Ms. Heyden stated she was unsure given that this is worked out at the plan check level, after Commission approval, but is aware of at least two other approvals that had this same new condition and they were able to work it out with the Fire Department.

In response to **Commissioner Nitafan's** question regarding the definition of "stealth design", Ms. Heyden said that, "stealth is a design that is so disguised you can't recognize what it is".

Vice Chair Lalwani needed clarification on the third part of condition No. 11 which reads the following:

- With the issuance of a permit for installation, an inspection shall be performed by the Fire Department to verify labeling, signage and transmission shutdown. Inspection fees shall apply.

Ms. Heyden clarified that inspection fees are applied when the equipment is installed to cover the cost of inspector's time.

Chair Hay asked "Why does the Fire department need to shut down the equipment"? Ms. Heyden said, "If the building were on fire, you wouldn't want electric equipment, such as a cellular antenna operating due to potential hazards to emergency personnel".

Chair Hay invited the applicant to address the Planning Commission.

**Jennifer Donnelly, representing Verizon Wireless**, noted that she has been working with the Fire Department regarding shut down procedures and noted that Fire will be trained on how to shutdown the equipment themselves.

Ms. Heyden amended Condition No. 11 to read the following:

- Each antenna shall be identified to denote its function, i.e., transmitter or receiver antenna. Shut down of transmitter antennas shall be provided. Contact the Fire Department for specifics on the requirements for shutdown. An indicator light shall be incorporated in the shutdown system if deemed necessary by the Milpitas Fire Department. Shutdown procedures shall be reviewed and approved by the Fire Department.

Chair Hay opened the public hearing.

There were no speakers from the audience.

**Close Public Hearing**

**Motion to close the public hearing on Agenda Item No. 2.**

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

**Motion** to approve Use Permit No. P-UP2003-4 and S-Zone Amendment P-SA2003-22 with staff's recommended findings and special conditions noted in the staff report and amended Condition No. 11 stated above.

M/S: Lalwani/Sandhu

AYES: 7

NOES: 0

**2. AMENDMENT TO THE  
ZONING ORDINANCE  
TEXT (P-ZT2003-1): Staff  
Contact: Felix Reliford,**

**Felix Reliford, Principal Housing Planner**, presented an amendment to Title XI Chapter 10 (Planning, Zoning, and Annexation) of the Milpitas Municipal Code Relating to Establishing Affordable Housing Regulations and In-Lieu Housing Fee and recommended approval to City Council.

Chair Hay referenced the Tri-County Apartment Association (TCAA) letter handed out at the beginning of the meeting and asked the Commission to take time to review the letter given the detailed information outlined in the letter.

**Commissioner Galang** referenced Midtown Policy 3.6 and Policy 7.9 requiring affordable housing and asked, "If housing developments of 12 units or less require a housing fee"? Mr. Reliford clarified that some of the lots in the Midtown area are small parcels and developers would have a choice of opting out and paying a fee rather than providing the affordable units.

Commissioner Giordano asked "Why is the Commission reviewing this project at this time when the Housing Element was approved a year ago?" Mr. Reliford stated that the City wants to implement their goal of achieving the 20% of affordable housing.

Commissioner Giordano maintained her position that she disagrees with the in-lieu housing fee.

Commissioner Nitafan wanted to know why the definition of Item 54.21 -3A does not include mortgage insurance. Mr. Reliford said that it is automatically assumed that mortgage insurance is part of the process and if the Commission requests, he would include "mortgage insurance" in the definition.

Commissioner Nitafan referenced Section 54.21-8 "eligibility requirements for BMR occupants" and stated the "final selection process" should be included in the statement. Mr. Reliford said staff would not recommend putting that in the ordinance because other cities don't put this in the ordinance and it is not necessary.

Chair Hay recalled at the March 26, 2003 Planning Commission meeting, some of the Commissioners were concerned that the final selection process was biased. He asked if staff had a chance to have the attorney review the process. Mr. Reliford noted that the City Attorney has not had a chance to review it but he will report back.

Chair Hay asked if ABAG's numbers are a goal or legal requirement. Mr. Reliford replied that, "It is a goal, and no City meets 100% of its requirements". He also noted that Milpitas has met 82% of their goal and that the average for Santa Clara County is 52%.

In response to Chair Hay's question regarding redevelopment money, Mr. Reliford clarified that 20% of redevelopment dollars are set aside to go to affordable housing and 15% of the units must be affordable.

Chair Hay asked, "How is the money spent to support projects"? Mr. Reliford cited examples such as Monte Vista, Summerfield Homes and Parc Metropolitan where the City assisted with programs.

Chair Hay asked, "How does a fee waiver process work"? Mr. Reliford responded that the RDA will receive a bill from a developer and will make a check out to the City. Mr. Reliford also noted that the City negotiates with developers and comes up with an agreement with the number of units and subsidy that will be provided.

Vice Chair Lalwani noted Attachment No. 38.761 and asked, "Under the general requirements section, five or more dwelling units should provide 20% affordable housing. How does this differ from the prior rules from the Midtown Specific Plan?" Mr. Reliford replied that if a developer has 12 or fewer units, he can pay the fee or provide the units and that the money will be used as RDA funds for things such as down payment assistance or land acquisition.

**Blair King, Assistant City Manager**, clarified for the record that 15% of all units that are developed or rehabilitated must be affordable, which doesn't mean that all developments have to have 15% of the units as affordable. It is an aggregate. Additionally, RDA set asides can be spent Citywide if findings are made and an owner participation agreement is entered into. He said that, "Each developer could have 15% units of affordable housing, or 100% all in one project and that the 20% set aside is a powerful tool in meeting affordable requirements through housing production or assistance program".

In response to Chair Hay's concern, Ms. Faubion stated that there is a legal versus a generic meaning of arbitrary and capricious that the TCAA letter cites that in their opinion "adopting the ordinance would be arbitrary and capricious". She stated that the purpose of the in-lieu fee is to increase production of affordable housing and to meet city goals. She also stated that, "The City can negotiate with the developers on a case by case basis, but with no obligation from the developers to build affordable housing units, so this ordinance puts the city in a better position because it adds certainty".

Chair Hay opened the public hearing.

**Jeffrey Dennison, Government Relations Manager, representing Tri County Apartment Association**, referenced his letter that he passed out to the Commission. He stated that the City of Watsonville added an in-lieu fee in 1990 of 25% and in 10 years, they only produced 9 affordable units. Watsonville has now decided to revise the fee because it is a significant barrier. He also noted that the City of Sunnyvale has an in-lieu fee of 10% and has produced 700 to 800 units in that timeframe. They, too-recognized that an in-lieu fee does not work for Sunnyvale because it has not been that successful. The City of San Jose has studied the in-lieu fee twice, and noted that it would not work in San Jose because of high density and the cost of urban parking garages. He stated that developers like what they are getting right now and would not want to see any changes.

In response to Chair Hay's question regarding housing prices, Mr. Dennison noted that rental housing prices in Milpitas have dropped 50% in a 30-month period.

**Paul Stewart, Santa Clara County Association of Realtors**, stated that Milpitas has a good reputation for working with projects on a case-by-case basis and that having an in-lieu fee would be "arbitrary and capricious". He stated that he is against the 20% fee.

**Heidi Wolfe-Reid, resident at 1397 Yosemite Drive and member of the Santa Clara County Association of Realtors**, stated that she is against the in-lieu housing fee and feels that everything is working well and doesn't want to discourage housing production in Milpitas with this ordinance.

#### **Close Public Hearing**

**Motion** to close the public hearing on Agenda Item No. 6.

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

Chair Hay stated that when the economy was doing really well, we had more jobs than housing and developers were developing every piece of land they could get their hands on, but that has changed. He feels that the City needs to have more flexibility and with the fee, we lose the flexibility. Chair Hay is against the fee.

Commissioner Giordano stated that she would be voting against the recommendation given that we have been efficient in the past in meeting the guidelines from the Housing Element.

Commissioner Nitafan echoed Commissioner Giordano and Chair Hay and is opposed to the in-lieu housing fee.

Vice Chair Lalwani is not in favor of the fee stating, "When you try to force people to do something, there is always a natural resistance".

Commissioner Sandhu mentioned that he would support staff's recommendation since this has been only a one-sided discussion and has not heard any opposition from the general public.

Commissioner Galang is not in favor of the proposal saying that, "We should leave as is".

**Motion** to approve the Negative Declaration for P-ZT2003-1.

M/S: Sandhu/Nitafan

AYES: 7

NOES: 0

**Motion** to recommend approval of the ordinance to City Council for P-ZT2003-1.

M/S: Williams/Sandhu

AYES: 2 (Sandhu and Williams)

NOES: 5 (Hay, Lalwani, Galang, Giordano and Nitafan)

Motion failed.

**Motion** to recommend denial of P-ZT2003-1 to City Council for the reasons discussed.

M/S: Giordano/Lalwani

AYES: 5 (Hay, Lalwani, Galang, Giordano and Nitafan)

NOES: 2 (Sandhu and Williams)

## RECESS

A ten minute recess was called at 8:50 p.m.

Chair Hay opened the public hearing on Agenda Item No. 7

Ms. Faubion requested to be excused at 9:00 p.m. and Chair Hay and the Commission agreed.

### 3. AMENDMENTS TO THE GENERAL PLAN AND MIDTOWN SPECIFIC PLAN, AMENDMENTS TO THE ZONING ORDINANCE TEXT AND MAPS, AND OF A RELATED DRAFT NEGATIVE DECLARATION (P-GM2003-1, P-ZT2003-1, P-ZC2003-1, P-EA2003-1):

*Staff Contact: Tambri Heyden, 586-3280.*

Ms. Heyden presented amendments to the General Plan and Midtown Specific Plan, amendments to the Zoning Ordinance Text and Maps, and of a related draft negative declaration and mentioned how it is divided into five parts as follows:

1. Adopt a resolution approving the Negative Declaration (EIA NO. P-EA2003-1);
2. Adopt a resolution approving General Plan and Midtown Specific Plan map amendments (P-GM2003-1) relating to properly designating existing parks in the POS classification;
3. Adopt a resolution approving General Plan and Midtown Specific Plan map amendments (P-GM2003-1) affecting the Midtown Plan Area relating to the addition of three (3) Serra Center parcels to the Midtown Specific Plan Area;
4. Adopt Ordinance No. 38.761 for amendments to the Zoning Ordinance text and map (P-ZT2003-1 and P-ZC2003-1) affecting Midtown Plan Area relating to text amendment item nos. 8, 14, 19, 20, 26, 27, 28, 29 and 30.



5. Adopt Ordinance No. 38.761 for amendments to the Zoning Ordinance text and map (P-ZT2003-1 and P-ZC2003-1) not affecting Midtown Plan Area relating to text amendment item nos. 1, 3, 4, 6, 7, 11, 13, 15, 17, 18, 21, 22, 23, 24, 25, 31, 32, and 35.

Ms. Heyden also mentioned that any Commissioner who has a conflict of interest should excuse himself or herself prior to the Chair opening up the respective part of this item for discussion.

**7-1: Adopt a resolution approving the Negative Declaration (EIA NO. P-EA2003-1)**

Ms. Heyden presented adopting a resolution approving the Negative Declaration (EIA NO. P-EA2003-1) after the Chair polled the Commission for conflicts of interest with this part of the agenda item.

Ms. Heyden mentioned that the issues with the proposed text amendments in regards to aesthetics, air quality, biological resources, soils, population and housing and utilities are determined to be less than significant and the comment period for the environmental document had closed without any receipt of comments.

Chair Hay opened the public hearing.

There were no speakers from the audience.

**Close Public Hearing**

**Motion** to close the public hearing on Agenda Item No. 7-1.

M/S: Lalwani/Sandhu

AYES: 7

NOES: 0

**Motion** to approve the Negative Declaration (EIA NO. P-EA2003-1) related to the proposed amendments.

M/S: Sandhu/Nitafan

AYES: 7

NOES: 0

**7-2: Adopt a resolution approving General Plan and Midtown Specific Plan map amendments (P-GM2003-1) relating to properly designating existing parks in the POS classification**

Commissioner Nitafan stated that he would be abstaining from the item due to his business being in close proximity of the discussed issue. Commissioner Nitafan left the Council Chambers.

Commissioner Giordano stated she would be abstaining from this item due to her property being in close proximity of the discussed issue. Commissioner Giordano left the Council Chambers.

Ms. Heyden presented a resolution for Council approval of General Plan and Midtown Specific Plan map amendments (P-GM2003-1) relating to properly designating existing parks in the POS classification. Ms. Heyden stated that the proposed public open space designation covers trails in Milpitas, as well.

Chair Hay opened the public hearing.

There were no speakers from the audience.

**Close Public Hearing**

**Motion** to close the public hearing on Agenda Item No. 7-2.

M/S: Sandhu/Lalwani

AYES: 5

NOES: 0

ABSTENTIONS: 2 (Nitafan and Giordano)

**Motion** to approve a resolution recommending Council approval of General Plan and Midtown Specific Plan map amendments (P-GM2003-1) relating to properly designating existing parks in the POS classification.

M/S: Sandhu/Lalwani

AYES: 5

NOES: 0

ABSTENTIONS: 2 (Nitafan and Giordano)

Commissioner Giordano and Commissioner Nitafan returned back to the Council Chambers.

**7-3: Adopt a resolution approving General Plan and Midtown Specific Plan map amendments (P-GM2003-1) affecting the Midtown Plan Area relating to the addition of three (3) Serra Center parcels to the Midtown Specific Plan Area**

Commissioner Nitafan stated he would be abstaining from Item No. 7-3 and Item No. 7-4 due to conflict of interest due to his business being in the Midtown Area. Commissioner Nitafan left the Council Chambers.

Ms. Heyden presented a resolution for Council approval of General Plan and Midtown Specific Plan map amendments (P-GM2003-1) affecting the Midtown Plan Area relating to the addition of three (3) Serra Center parcels to the Midtown Specific Plan Area.

Ms. Heyden stated that three parcels were left out of the Midtown boundary when adopted last year that are part of the Serra Center near Junipero Drive. They are recommended to be added now.

Chair Hay opened the public hearing.

There were no speakers from the audience.

**Close the Public Hearing**

**Motion** to close the public hearing on Agenda Item No. 7-3.

M/S: Sandhu/Lalwani

AYES: 6

NOES: 0

ABSTENTIONS: 1(Nitafan)

**Motion** to approve a resolution recommending Council approval of General Plan and Midtown Specific Plan map amendments (P-GM2003-1) affecting the Midtown Plan Area relating to the addition of three (3) Serra Center parcels to the Midtown Specific Plan Area.

M/S: Lalwani/Williams

AYES: 6

NOES: 0

ABSTENTIONS: 1(Nitafan)

**7-4: Adopt Ordinance No. 38.761 for amendments to the Zoning Ordinance text and map (P-ZT2003-1 and P-ZC2003-1) affecting Midtown Plan Area relating to text amendment item nos. 8, 14, 19, 20, 26, 27, 28, 29 and 30.**

Ms. Heyden presented Ordinance No. 38.761 for amendments to the Zoning Ordinance text and map (P-ZT2003-1 and P-ZC2003-1) affecting the Midtown Plan Area relating to text amendment item nos. 8, 14, 19, 20, 26, 27, 28, 29 and 30. Ms. Heyden reviewed only those items that the Planning Commission had a concern with from previous discussions and explained how they were addressed as follows:

*Item No. 8* – Staff made the change to reference stalls to indicate parking spaces. Additionally, the depth of the parking spaces shouldn't exceed two parking spaces deep.

*Item No. 19*- Since the reference to the North Midtown area is not mapped anywhere in the midtown plan, staff changed the terminology to add Transit Oriented Developments (TOD) near a one quarter mile radius near the northern BART station (on Calaveras).

*Item No. 20* – Staff changed the 10,000 square feet threshold to 5,000 square feet so that the Planning Commission would be able to review these project amendments.

*Item No. 27* – Staff changed Child Care Facility to clarify that the care took place in the caretaker's home.

*Item No. 29* – Staff changed the recommendation to mirror San Jose's 40% compact parking allowances and dimensions.

Chair Hay opened the public hearing on Agenda Item No. 7-4.

There were no speakers from the audience.

**Close the Public Hearing**

**Motion** to close the public hearing on Agenda Item No. 7-4.

M/S: Lalwani/Sandhu

AYES: 6

NOES: 0

ABSTENTIONS: 1(Nitafan)

**Motion** to recommend Council approval of Ordinance No. 38.761 for amendments to the Zoning Ordinance text and map (P-ZT2003-1 and P-ZC2003-1) affecting Midtown Plan Area relating to text amendment item nos. 8, 14, 19, 20, 26, 27, 28, 29 and 30.

M/S: Lalwani/Giordano

AYES: 6

NOES: 0

ABSTENTIONS: 1(Nitafan)

Commissioner Nitafan returned back to the Council Chambers.

**7-5: Adopt Ordinance No. 38.761 for amendments to the Zoning Ordinance text and map (P-ZT2003-1 and P-ZC2003-1) not affecting Midtown Plan Area relating to text amendment item nos. 1, 3, 4, 6, 7, 11, 13, 15, 17, 18, 21, 22, 23, 24, 25, 31, 32, and 35.**

Ms. Heyden presented proposed Ordinance No. 38.761 for amendments to the Zoning Ordinance text and map (P-ZT2003-1 and P-ZC2003-1) not affecting Midtown Plan Area relating to text amendment item nos. 1, 3, 4, 6, 7, 11, 13, 15, 17, 18, 21, 22, 23, 24, 25, 31, 32 and 35. Ms. Heyden went over each item that the Commissioners had a question on from previous discussions and explained the changes as follows:

*Item No. 1* – Staff received feedback from CEPAC, CAC, and the Telecommunications Commission which have been incorporated:

- Prohibition of guy wires for antennas over 20 feet in height from grade.
- Added color restrictions for antennas.
- Restricted number of antenna support structures to two.
- Removal of abandoned antennas.
- Prohibition of encroachment into easements.

Commissioner Williams asked if staff is restricting satellite dishes and Ms. Heyden noted that because they are preempted to a degree that they are, but only in a limited way to comply with federal law.

*Item No. 4* – Regarding 30 percent maximum rear yard coverage, staff noted the clarification for in ground spas.

*Item No. 6* – Reroofs to wood shake in the hillside and throughout the City are disallowed without Commission approval whereas tri-laminate would be staff approved.

*Item No. 7* – Staff proposed to no longer require a Use Permit if the housing density is less than 21 units an acre.

*Item No. 11* – After legal review staff proposed no changes to the proposed new system for administrative citations for zoning code violations.

*Item No. 15* – Staff overlooked MXD and has now added medical and dental offices in MXD. Also, a word change from “place” to “structure” was made.

*Item No. 18* –Staff deleted the 40-day time limit for compliance with the state law streamlining act.

*Item No. 21* – Staff amended the definition for public uses and quasi public to clarify community theaters.

*Item No. 24* – Staff researched state law and determined separate entrances for second family units cannot be prohibited. Staff added a traffic study requirement if needed. Ms. Heyden explained how utility billing for these units would have to change.

*Item No. 25* – After research of others cities, staff proposed to exclude all structured parking in Midtown from FAR, but elsewhere, only basement parking excluded from FAR.

*Item No. 32* – Staff amended the text to allow for a revocation when the use permit has been abandoned or superseded by a new use.

*Item No. 33* – Staff proposes a definition of conference centers and allowing with a CUP in MP district.

*Item No. 35* – Staff proposes allowing tutoring centers as permitted uses in the Town Center district.

Chair Hay opened the public hearing.

There were no speakers from the audience.

#### **Close the Public Hearing**

**Motion** to close the public hearing on Agenda Item No. 7-5.

M/S: Lalwani/Sandhu

AYES: 7

NOES: 0

**Motion** to recommend approval of Ordinance No. 38.761 for amendments to the Zoning Ordinance text and map (P-ZT2003-1 and P-ZC2003-1) not affecting Midtown Plan Area relating to text amendment item nos. 1, 3, 4, 6, 7, 11, 13, 15, 17, 18, 21, 22, 23, 24, 25, 31, 32, and 35.

M/S: Lalwani/Sandhu

AYES: 7

NOES: 0

#### **IX. NEW BUSINESS**

Chair Hay opened up Agenda Item No. 9 under New Business.

**4. RESOLUTION NO. 492**  
**(P-AD2003-4): Staff**  
*Contact: James Lindsay,*  
*586-3274.*

**James Lindsay, Development Services Manager, and Blair King, Assistant City Manager,** presented Resolution No. 492 which is a Resolution finding the proposed Eighth Amendment to the Redevelopment Plan for Project Area No. 1 conforms to the General Plan and recommending approval of the Eighth Amendment and certification of the Environmental Impact Report to the Redevelopment Agency and City Council and recommended the Commission to adopt the resolution.

Commissioner Giordano referenced the table of contents modification on page 4 and page 24 regarding the added area and average sale price and asked how the table applies to the summary section of that document.

Mr. King noted that in the final Environmental Impact Report, the document references the preliminary report.

**Motion** to approve Resolution No. 492.

M/S: Giordano/Nitafan

AYES: 7

NOES: 0

Chair Hay opened Agenda Item No. 10 under New Business.

**5. PRESENTATION OF  
2003-2008 CAPITAL  
IMPROVEMENT**

**PROGRAM:** *Staff Contact:*  
*Mike McNeely, 586-3301*

**Mike McNeely, City Engineer**, presented the 2003-2008 Capital Improvement Program and recommended approval to Council.

Regarding Community improvements projects, Commissioner Williams asked about the timing of the various GIS layers which **Terry Medina from IS** explained that it is completed for use in police vehicles, but won't be available to the public within 12 months.

Regarding Parks projects, **Chair Hay** asked about the opening of the Dog Park which Mr. McNeely explained would be in 6 months.

Commissioner Nitafan commented that this year's document format seems incomplete from previous years when the back of the document contained information about unfunded future projects such as the library and Cultural Arts Center. Mr. McNeely said he would provide that information later but this focus is on conformance with the General Plan for Council adoption on May 13, 2003. He also noted that mid-year corrections could be made if funding was found, after adoption, for unfunded projects.

Commissioner Galang questioned the resurfacing of all athletic courts to which Mr. McNeely indicated that 4 major park upgrades have been prioritized first before the court re-sourcing.

Mr. McNeely mentioned, after comment from Chair Hay, that Berryessa Creek Trail Reach 3 landscaping is included although some areas cannot be landscaped due to slope and reconstruction of the levee.

Regarding street projects, Commissioner Nitafan asked whether the million dollar regional study for Calaveras overpass widening for I-680/I-880 connector was funded. Mr. McNeely explained why it was not appropriate and options, as well as discussions with Fremont.

Commissioner Williams asked about the central point traffic signal control project. Mr. McNeely explained that fiber was already under construction.

Commissioner Williams also asked about utility undergrounding at Main Street and Great Mall parkway to which Mr. McNeely asked would not be looked until the soon-to-be started Midtown implementation project. Upon request, Mr. McNeely gave an update of the 237/I-880 flyover construction to be completed in 2004.

Regarding water and sewer projects, Mr. McNeely explained that new projects don't have a CIP number.

Commissioner Williams asked if Midtown sewer improvements were included, especially for Main Street. Mr. McNeely explained that those listed impact Midtown, but are not solely for Midtown.

Regarding storm water projects, Mr. McNeely discussed upgrades to the Manor pumpstation to address under-sizing.

**Motion** to recommend approval to Council of the 2003-2008 Capital Improvement Program.

M/S: Lalwani/Sandhu

AYES: 7

NOES: 0

**X.  
ADJOURNMENT**

There being no further business, the meeting was adjourned at 11:15 p.m. to the next regular meeting of April 23, 2003.

Respectfully Submitted,

Tambri Heyden  
Planning Commission  
Secretary

VERONICA RODRIGUEZ  
Recording Secretary